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JURISDICTIONAL SIGNIFICANCE OF A SUBSTANTIAL QUESTION OF LAW – SECOND APPEAL

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ABSTRACT

Understanding of the 'Substantial Question of Law' plays an important role in deciding the jurisdiction of the High Courts under the second appeal for any civil disputes. The law governing the second appeal very clearly states that unless a substantial question of law is not involved and formulated, the second appeal cannot be entertained by the High Court. But, what may be considered as a substantial question of law for exercising the jurisdiction is neither precisely mentioned nor possible to be mentioned in the Code of Civil Procedure, 1908. In absence of such possibility of having precise and express provision identifying various issues that may be well covered under the ambit of a substantial question of law, parties to the suit mention anything and everything as a substantial question of law to get their matter admitted in the High Court for the second appeal. It is not only the parties but also the High Courts commit an error in the formulation of such question while admitting the matter under the second appeal. This article tries to identify the meaning, importance, rationale, scope of the term 'Substantial Question of Law' in context of the second appeal correlating it with the jurisdictional pre-condition, scope and limitation of the power of the High Courts under the second appeal.

KEYWORDS: Second Appeal, Substantial Question of Law, Section 100, Interference with the concurrent findings.

INTRODUCTION:

The purpose of the Courts is to finally settle the disputes between the parties and to bring the disputes to end. To decide any disputes the court, therefore, follows a fair process of adjudication already laid down by law and also known to the parties. Through this fair process of adjudication, the courts also establish the rule of law and thereby helps in creating greater acceptance of the authority of law, which is one of the most important conditions of the civilized society as accepted in the democratic set-up of governance of any state.

However, considering whatever said and whichever way the dispute got decided by the court as the accurate way always and the only way forward is fatal for many reasons. Such pre-assumed notion is not virtuous as it always inherits in itself the capability of eroding the faith of the public at large on the judicial system, especially when a patent error is visible in the decision making process either on the point of law or on the application of the procedure in the final disposal of the matter. This notion seems to undermine the wisdom of the parties who submitted the disputes for adjudication and thereby expecting to get a righteous decision based on legal reasoning. It is quite possible to commit an error in deciding the disputes by the Court as it is presided by human beings. To strike a balance between the judicial understandings of a dispute at hand and decision thereon with the wisdom and the expectations of the parties, the process of reaching to any judicial decision is always made subject to proving of the issues between parties by evidence, that too satisfying the law governing the relevancy, admissibility, and appreciation of evidence.

It is a settled law that once it is held that a court has jurisdiction to entertain and to decide a matter, the correctness of the decision given cannot be said to be without jurisdiction inasmuch as the power to decide necessarily carries with it the power to decide wrongly as well as rightly.[1] It is well explained in Ittyavira Mathai v. Varkey Varkey[2] by the Supreme Court:

> "But it is well settled that a court having jurisdiction over the subject matter of the suit and over the parties thereto, though bound to decide right may decide wrong; and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter and it had the jurisdiction over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, courts have jurisdiction to decide right or to decide wrong and even though they decide wrong, the decrees rendered by them cannot be treated as nullifies."

But, as per the law, once a dispute gets decided by the competent court, it becomes final and cannot be re-tried due to the application of the doctrine of res-judicata[3]. The necessity and importance of the principle of res-judicata is duly explained by the Supreme Court in the simplest possible manner in Satyadhyan Ghosal v. Deorjin Debi[4] in the following words:

> "The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or on a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again".

It is, however, never mean that the aggrieved parties have no remedy left thereafter. The only meaning that can be assigned to this finding is that it is a final decision as far as the court pronouncing it and is legally valid and binding on the parties till not changed, reversed or nullified by the decision of a superior forum. To address such anomaly, provisions for appeal is made in the procedural laws. The aggrieved parties, as the Code of Civil Procedure, 1908 prescribe, may resort to the legal recourse of appeal, review, revision etc. Even then, if the parties are not satisfied with the decision so given by the first appellate court, it may bring an appeal against the appellate decree in the High Court through second appeal subject to laid down law in code governing procedure. In this way, one may go up to the highest court of the country following the law so provided under the code regulating the procedure. Providing for such provisions in the Code is clearly indicative of the fact that such incidence of committing error in deciding the disputes is anticipated, though it is highly desirable to avoid such incidence.

Hence, such anticipated incidence should not be made a general norm as it may affect the grater goal of achieving the robust time-bound justice dispensing system. Also, if the matter submitted for adjudication is of greater public interest, it may even affect the consciousness of the public at large. In the second appeal particularly, there is a high probability of such issues which may even be containing the question for adjudication that comes in front of the High Court for the first time and the public at large may be interested in knowing the rationale of the decision given by the Court thereon.

However, it must be noted here that right to make an appeal to any higher forum, such as the first appeal to the first appellate forum, second appeal to the second appellate forum, appeal to supreme court etc. are all statutory rights[5]; it can only be availed if such right exists at the first instance and the condition laid down in the statute is satisfied in the given matter. Unless the conditions are satisfied, the appeal is not maintainable at law. Hence, it's quite clear that the right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law.[6]

Second Appeal: Legal Position

It was observed that the Courts were allowing the second appeal on various grounds ranging from the question of law, question of facts, mixed question of law and facts, improper approach by the court in dealing with the first appeal and so on; sufficient enough to create the doubt on the actual scope of the Second appeal in the minds of the public and thereby burdening the High courts with pendency of cases.

The Shah Committee, which dealt with the arrears of cases, observed the necessity of stricter and better security of the second appeal and suggested to confining its scope to the question of Law. The Law Commission of India[7] while reviewing the scope of the existing provision[8] for second appeal observed that:

> "having regard to the terms of the section 100, an appeal should not be

admitted merely because the appellant has shown that an arguable and *prima facie* valid point of law arises in the appeal, but that the court has to be satisfied that the decision of the lower appellate court on the point of law was erroneous and that in order to do justice between the appellant and the respondent, it is essential that a further hearing to be given to both the parties".

The Commission then recommended to confine it to the cases where, the question of law is involved and the question of law so involved was substantial. It stated very clearly that:

"Having considered the matter in all its aspects, we have come to the conclusion that the right of second appeal should be confined to cases where –

i. a question of law is involved; and

ii. the question of law so involved is substantial."

Considering the recommendation, Section 100 has been amended by the Amendment Act of 1976. Now, the High Court can interfere with the decision of the first appellate court in the second appeal only when it is satisfied that the debatable points involve the substantial question of law.[9]

So, in the present context, as far as the second appeal is concerned, it is allowed to be filed in the High Court, if the High Court is satisfied that it 'involves a substantial question of law'[10] ; but not on any other ground.[11] The code further made it clear that the appeal shall be herd only on the question that precisely stated[12] by the appellant and formulated[13] by the Court. However, in exceptional circumstances in the interest of justice on the recording of reason, the High Court may hear the second appeal on any other substantial question of law involved but not formulated.[14]

Jurisdictional Pre-Condition: Substantial Question of Law

The existence of substantial question of law is sine qua non for the entertaining second appeal by the High Court.[15] Though the substantial question of law is not defined in the Code, in Chunilal V Mehta and Sons v. Century Spg. & Mfg. Co. Ltd[16] the Supreme Court defined the expression 'substantial question of law' to mean one which is of general public importance or which directly or substantially affects the rights of the parties and which has not been finally settled by the Supreme Court, the Privy Council or the Federal Courts.[17]

In State Bank of India v. SN Goyal[18], Justice RV Raveendran explained the meaning of the 'substantial question of law' in the following words:

"Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law."

What may be considered as substantial question of law involved and what may not be is one question, but framing of a question to hear second appeal is the primary condition. A judgment passed without such formulation is patently illegal. In Umer Khan v. Bismillabi[19], Justice RM Lodha opined on the point as under:

"In our view, the very jurisdiction of the High Court in hearing a second appeal is founded on the formulation of a substantial question of law. The judgment of the High Court is rendered patently illegal, if a second appeal is heard and judgment and decree appealed against is reversed without formulating a substantial question of law. The second appellate jurisdiction of the High Court under Section 100 is not akin to the appellate jurisdiction under Section 96 of the Code; it is restricted to such substantial question or questions of law that may arise from the judgment and decree appealed against. As a matter of law, a second appeal is entertainable by the High Court only upon its satisfaction that a substantial question of law is involved in the matter and its formulation thereof. Section 100 of the Code provides that the second appeal shall be heard on the question so formulated. It is, however, open to the High Court to reframe substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing the second appeal but reversal of the judgment and decree passed in appeal by a court subordinate to it in exercise of jurisdiction under Section 100 of the Code is impermissible without formulating substantial question of law and a decision on such question. This Court has been bringing to the notice of the High Courts the constraints of Section 100 of the Code and the mandate of the law contained in Section 101 that no second appeal shall lie except on the ground mentioned in Section 100, yet it appears that the fundamental legal position concerning jurisdiction of the High Court in second appeal is ignored and overlooked time and again. The present appeal is unfortunately one of such matters where High Court interfered with the judgment and decree of the first appellate court in total disregard of the above legal position."

So, it is quite clear, unless the substantial question of law is not formulated, no hearing of second appeal by the High Court will take place. It should not be confused with the proviso of Section 100(5). The proviso is applicable only when any substantial question of law has already been formulated thereby empowering the High Court to hear the second appeal, then, with reasons recorded in writing, the High Court may allow appeal on any other substantial question of law which was initially not formulated[20]. However, in case when no such question is initially formulated the appeal shall not be allowed.

The denial of appeal has a reason, as observed properly in Sonubai Yeshwant v. Bala Govinda[21] by Justice Masodkar:

"The restrictive scheme of Section 100 couched in mandatory terms firstly cast a duty on the Court not to admit the appeals which documents not involve substantial question of law, for, such an appeal is not provided for and secondly, it requires the admission order to speak about the spell out such substantial question and thirdly on that question the notice has to be issued to the respondent, who are enabled to show that such a question is neither a substantial question of law, nor arises in a given appeal, but further at that stage with the leave of the Court the appellant is further enabled to rely on any other substantial question of law which can form the part of the debate at the final hearing stage."

In Karunanidhi v. Seetharama Naidu[22] the Supreme Court has said that the high court has no jurisdiction to decide on a second appeal on a question which is not framed as required under Section 100(4) of the Code of Civil Procedure. Justice AM Sapre, speaking for the Supreme Court, clearly mentioned in this judgment:

"It is a settled principle of law that the High Court has jurisdiction to hear the second appeal only on the substantial question of law framed under Section 100(5) of the Code of Civil Procedure, 1908. Equally well settled principle of law is that the High Court has no jurisdiction to decide the appeal on the question which is not framed as required under Section 100(4) of the Code."

It is also important to see the Sate Amendment before applying the provision of second appeal as it may be possible that the rule of substantial question of may not be applicable.[23]

However, if there is omission by the Court in spelling out the substantial question after admission of second appeal, which of course should not happen – but if happened, the Court is empowered to get it cured exercising inherent power under Section 151.

Jurisdictional Extent: Substantial Question of Law

In the light of foregoing discussion, it is quite clear that for application of Section 100 by the High Courts to entertain the second appeal needs formulation of substantial question of law at the first instance.

The pertinent question that came in debate thereafter is - 'what may be considered as the substantial question of law?' Whether it may be a pure question of law, or may be allowed to be considered the pure question of fact also, or even the mixed question of law and fact will come well within the ambit of the understanding of substantial question of law. Can the High Court while entertaining second appeal determine issue of fact – one which has already been an issue at the trial or at the first appellate court; second, an absolute new issue of altogether?

In relation to identifying the substantial question of law involved, it is important to emphasize that the core issue around which the entire case evolves. In such circumstances the issue so involved shall always be considered as the one suitable for adjudication in second appeal. Hence, when such core issue is not adjudicated upon, it will always be resulting into a substantial question of law for consideration under section 100.[24]

If the core issue so identified at the trial level involves the construction of any document then the construction of such document shall also be considered as the substantial question of law. It is well settled by the Privy Council judgment[25] and has also been reaffirmed in many cases[26] by the Supreme Court of India. In the recent judgment, it is held that the interpretation of documents and examination of its effect does involves a substantial question of law for the High Court to decide in second Appeal.[27]

Therefore, when there is misconstruction of a document or wrong application of a principle of law while interpreting a document, it is open to interference under Section 100 of the Code of Civil Procedure, 1908.[28]

However, it must be differentiated with the situation that invites for two different but valid interpretations. In such circumstances, just because the lower court has accepted one view not the other, it cannot be a ground for allowing the second appeal. So, where the first appellate court, which is the final court of fact, has accepted the interpretation which is quite plausible and acceptable, the High Court in second appeal cannot interfere with the judgment.[29]

As a set norm, it is not open for the High Court to re-appreciate or re-access the evidence. Not only is that, even finding of the fact in second appeal not allowed to be questioned in general. It is quite a settle position now that even when there are views possible from the available evidence it is not open for the second appellate court to set aside a finding because the other view will be more appealing.[30] In Thiagarajan v. Sri Venugopalaswamy B. Koil[31], the Supreme Court stated:

> "This Court in a catena of decisions held that where findings of fact by the lower appellate Court are based on evidence, the High Court in second appeal cannot substitute its own findings on appreciation of evidence merely on the ground that another view was possible".

However, if the lower court or the first appellate court have committed a grave error of not considering the relevant evidence which was sought to be considered by the party at the court, or the court erroneously rejected to consider the evidence vitiating the findings of the trial or first appellate court, it will be unjust to conclude that it cannot be corrected by the High Court at all. The Supreme Court has also taken similar view in Jagdish Singh v. Natthu Singh[32] that it will defeat the goal of rendering justice to the parties. Justice M Venkatachalliah speaking for the Supreme Court in this case opined:

> "As to the jurisdiction of the High Court to appreciate evidence in a second appeal it is to be observed that where the findings by the Court of facts is vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings. We find no substance in the first contention".

Hence, It is but obvious in the light of the substantial part of Section 100 and 102 of the Code of Civil Procedure, 1908 the scope is not only limited to the formulated substantial question of law subject to relaxation as provided under Section 100(5) but also restricted to the question of law, appreciation of evidence finding thereon by the lower and first appellate court, and not open to extend to the mixed question of law and fact if raised for the first time in the High Court.

Jurisdictional Limitation: Substantial Question of Law

The question of interference with the concurrent finding of fact by the High Court in second appeal is not a new question for debate. It is well taken question by the Privy Council, the Law Commission of India, and the Supreme Court of India many a times. However, it keeps on coming every now and then.

Probably, it seems it is because of Section 103 of the Code of Civil Procedure which empowered the High Court to determine the issue of fact. This right of determination of question of fact at second appeal by the High Court probably creates confusion and the because of this confusion the issue of interference with the concurrent findings by the High Court in second appeal keeps on surfacing. To understand the power of High Court under this section these questions need to be looked through and a true interpretation of the provisions has to be adhered with.

The bare reading of the provision cannot be understood to mean that altogether a new issue of fact or a set of all new evidences giving rise to the fact in question to be allowed under the provision. Also, it cannot validly be argued that introduction, acceptance and appreciation of new evidence is allowed in the second appeal i.e., a trial in true sense – a patently defective construction which of course cannot be the case. Hence, judicial understanding of Section 103[33] of the Civil Procedure Code, 1908 to map out the real interpretation is indispensable to bring to an end the confusion that keeps on popping up every now and then from the various decision of the High Courts.

As far as the wording of the provision are concerned, it certainly indicate that the High Courts are empowered to determine the new issues though subject to the conditions mentioned therein. The conditions so mentioned talks about the issues not determined by the lower courts or the first appellate courts but realistically be determined based on the evidence on record, and also, issues if wrongly determined by the lower or appellate court. But it is quite clear that all these are discussed in context which is precisely reflected from the fact that these questions/issues must be only those which are referred in section 100. Meaning thereby, the issue of fact whose determination is allowed under section 103 is not to be read in isolation but in conjunction with section 100. It is precisely how Justice A Shrivastava speaking for Madhya Pradesh High Court in Amar Bahadur Singh v Devendra Singh[34] has noted:

> "Thus, it is clear on bare perusal of Section 103, CPC that this section appears to be proviso and explanation to Section 100 and empowers the High Court to determine any issue on two contingencies:
>
> (i) When determination of such issue is necessary for the disposal of the appeal and the evidence on record is sufficient and yet it has not been decided either by the trial Court or by the lower appellate Court or by both the Courts; or
>
> (ii) When an issue has been wrongly determined either by the trial Court or by the lower appellate Court or by both the Courts by reason of a decision on substantial question of law."

So, the enabling provision empowering the High Court to take an issue of fact in second appeal is subject to the existing evidence and of course, to do justice to the parties by eliminating the wrong determination of issues as a substantial question of law. In no other situation, the exercise of power given under the provision can be considered as justified application.

The Privy Council in the year 1890 itself while deciding the case of Mussummat Durga Choudhrain v. Jawahir Singh Choudhri[35] had emphatically declared its position saying that there was no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross or inexcusable the error might seem to be; and also added a note of warning that no court in India had the power to extend jurisdiction in such cases under second appeal.

Even the Law Commission of India in its 54th Report dated February 1973 also takes the similar position by mentioning that in general the concurrent finding of the facts are not to be disturbed by the High Court in second appeal. But this rule is subject to the express grounds of second appeal enumerated in Section 100.

There are several decisions of the apex court highlighting the fact that the concurrent findings recorded by the trial court cannot be interfered with in second appeal by wrongly attributing perversity to the findings where the findings are amply supported by reasons.[36]

The March 13, 2019 order of Justice MR Shah speaking for the Supreme Court in Gurnam Singh v. Lehna Singh[37] categorically reminded the High Courts of their jurisdictional power and limitation prescribed under Section 100 of the Code of Civil Procedure, 1908. The bench comprising Justice Rao and Justice Shah has set aside the order of the High Court passed in second appeal saying:

> "Despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.....We are constrained to observe as above and remind the High Courts the limitations under Section 100 of the CPC and again hope that High Courts would keep in mind the legal position before interfering in Second Appeal under Section 100 of the Code of Civil Procedure."

Not only that, even the Apex Court has prescribed such limitation for itself as well with respect to the concurrent findings of the fact recorded by the trial court and by the first appellate court. The Supreme Court in Parminder Singh v. Gurpreet Singh[38], decided in July 30, 2017 has observed that if there are concurrent findings of fact by the trial court, first and second appellate courts, such findings are binding on the Supreme Court. The bench comprising Justice AK Agrawal and Justice AM Sapre while deciding the case said:

> "The findings recorded by the three courts on facts, which are based on appreciation of evidence undertaken by the three Courts, are essentially in the nature of concurrent findings of fact and, therefore, such findings are binding on this Court. Indeed, such findings were equally binding on the High Court while hearing the second appeal."

The Bench speaking for the Supreme Court in this case went further to the extent of saying that:

> "This Court being the last Court in hierarchy cannot disturb such concurrent findings while exercising power under Article 136 of the Constitution of India. As mentioned above, these findings are binding on this Court."

CONCLUSION:

It is not sufficient to have the substantial question of law alone to invoke the jurisdiction of the High Courts under Section 100, but also such question should be a question involved in the matter, must also be raised at the trial level by the parties, taken on record by the trial/first appellate court, parties persuaded to make an issue out of it for adjudication, have sufficiently supported by evidence placed on record are important for determining jurisdiction. If any issue is not having any trace at the trial level or at the first appellate level, it cannot be directly brought at the second appeal irrespective of the fact that it ought to have been brought at trial level but missed due to an error on the part of either party or the court.

FOOTNOTES:

1. Takwani, C. K., (2016): Civil Procedure with Limitation Act, 7th ed., EBC, Lucknow, pp 44-45.
2. AIR 1964 SC 907.
3. Section 11 of the Code of Civil Procedure, 1908 – "Res Judicata - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court".
4. AIR 1960 SC 941.
5. Ganga Bai v. Vijay Kumar, AIR 1974 SC 1126.

6. Takwani, C. K., (2016): Civil Procedure with Limitation Act, 7th ed., EBC, Lucknow, pp 478-479.

7. 54th Report of Law Commission of India, February 1973.

8. Second Appeal (before the amendment of 1976) – Section 100(1): Save where otherwise expressly provided in the body of this code for the time being in force, an appeal shall lie to the High Court on any of the following grounds, namely:

   a) the decision being contrary to law or to some usage having the force of law;

   b) the decision having failed to determine some material issue of law or usage having the force of law;

   c) a substantial error or defect in the procedure provided by this code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

   (2) An appeal may lie under this section from an appellate decree passed ex-parte.

9. Harcharan Singh v. Shivrani, AIR 1981 SC 1284.

10. Section 100 (1) of the Code of Civil Procedure, 1908 – "Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law".

11. Section 101 of the Code of Civil Procedure, 1908 – "Second appeal on no other grounds: No second appeal shall lie except on the ground mentioned in section 100".

12. Section 100(3) of the Code of Civil Procedure, 1908 – "In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal".

13. Section 100(4) of the Code of Civil Procedure, 1908 – "Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question".

14. Proviso of Section 100(5) of the Code of Civil Procedure, 1908 – "The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

    Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question".

    Order XLII, Rule 2 – "Power of Court to direct that the appeal be heard on the question formulated by it - At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the Court shall formulate the substantial question of law as required by section 100, and in doing so, the Court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the Court, given in accordance with the provision of section 100"

15. Monicka Poosali v. Anjalai Ammal, AIR 2005 SC 1777.

16. AIR 1962 SC 1314.

17. Mulla, D.F., (2013): The Code of Civil Procedure, 18th ed., LexisNexis, Gurgaon, Vol I, pp 1040.

18. AIR 2008 SC 2594.

19. (2011) 9 SCC 684.

20. CA Sulaiman v. State Bank of Travancore, AIR 2006 SC 2848.

22. AIR 1983 Bom 156.

23. Civil Appeal No. 490 of 2017.

24. Kirodi v. Ram Parkash, Civil Appeal No. 4988 of 2019.

25. Achintya Kumar Saha v Nanee Printers, AIR 2004 SC 1591

26. Guram Ditta v T Ram Ditta, AIR 1928 PC 172

27. Kochukakkada Aboobacker v Attam Kasim, AIR 1996 SC 31; Neelu Narayani v Lakshmanan AIR 2000 SCW 1949; Ikram Hussain v Raman Nath, AIR 2003 Han 24; Santakumari v Lakshmi Amma Janki Amma AIR 2000 SC 3009; Rukamanibai v Venkoba Rao AIR 2003 Kant 473.

28. Sk Bhikan vs. Mehamoodabee, Civil Appeal No 3048 of 2017

29. Hero Vinoth v Saraswathi, AIR 1997 SC 2234

30. The Code of Civil Procedure, Sir Dinshaw Fardunji Mulla, 18th Edition, Updated by BM Prasad and Manish Mohan, 2013 LexisNexis Vol I page 1052.

31. Ibid.

32. JT 2004 (5) SC 54

33. (1992) 1 SCC 647.

34. Section 103 of the Code of Civil Procedure, 1908 – "Power of High Court to determine issues of fact: In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal –

   (a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

   (b) which has been wrongly determined by such Court or Courts reason of a decision on such question of law as is referred to in section 100".

35. AIR 2007 MP 262.

36. (1890) LR 17 1A 122.

37. Bhairab Chandra v. Randhir Chandra, (1988) 1 SCC 383.

38. Civil Appeal No.6567 of 2014 decided on March 13, 2019.
Civil Appeal No.3612 of 2009 decided on July 25, 2017.